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18 *application pending

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12 BRIGETTE HOOD, individually and on behalf of
herself and all others similarly situated,

13 Plaintiff,

14 v.

15 WALMART INC.,
16 Defendant.

17 Case No: 3:24-cv-03548-JD

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**JOINT CASE MANAGEMENT
STATEMENT**

29 Judge: James Donato
30 Conference Date: September 19, 2024
31 Time: 10:00 AM

1 Plaintiff Brigitte Hood (“Plaintiff”) and Defendant Walmart Inc. (“Defendant”), by and
 2 through their respective counsel, hereby submit this Joint Case Management Statement pursuant
 3 to the Standing Order for Civil Cases Before Judge James Donato; the Standing Order for All
 4 Judges of the Northern District of California; and the Court’s Order of September 5, 2024 (*see*
 5 ECF No. 26). The parties met and conferred by telephone on September 11, 2024, attended by
 6 Brandon Wise and Domenica Russo of Peiffer Wolf Carr Kane Conway & Wise, LLP and John
 7 Parker of Almeida Law Group LLC for Plaintiff; and Michael Glick and Megan McGlynn of
 8 Kirkland & Ellis LLP for Defendant. The parties have continued to confer through email regarding
 9 this Joint Case Management Statement.

10 **1. JURISDICTION AND SERVICE**

11 Defendant executed a waiver of service on August 19, 2024. *See* ECF No. 11. No party
 12 remains to be served.

13 The Parties agree that this Court has subject matter jurisdiction pursuant to 28 U.S.C.
 14 § 1332(d). Plaintiff contends that venue is proper in this District and Division pursuant to
 15 28 U.S.C. § 1391, and that personal jurisdiction is proper as to Plaintiff’s individual claims and
 16 those she proposes to bring on behalf of her proposed class.

17 **2. FACTS**

18 Plaintiff alleges she purchased “Mainstays” brand aluminum pans and “Expert Grill” brand
 19 aluminum tray liners on Walmart.com that were labeled as “Made in the USA.” Plaintiff contends
 20 that the “Made in the USA” labeling is false and deceptive because the aluminum products are
 21 manufactured from bauxite that is mined abroad.

22 Defendant asserts that the pans and tray liners at issue are properly labeled as “Made in the
 23 USA,” deny Plaintiff’s allegations, and dispute that Plaintiff has been harmed or is entitled to any
 24 relief on behalf of herself or any putative class.

25 **3. LEGAL ISSUES**

26 Plaintiff’s Complaint asserts five causes of action, including under California’s Consumers
 27 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; California’s Unfair Competition Law, Cal.
 28 Bus. & Prof. Code § 17200, *et seq.*; California’s False Advertising Law, Cal. Bus. & Prof. Code

1 § 17500 *et seq.*; breach of express and implied warranties under Cal. Com. Code §§ 2313,
 2 2314(2)(f); and a claim for unjust enrichment.

3 Defendant denies all of the Plaintiff's claims. Defendant is currently contemplating filing
 4 a motion to dismiss the entirety of Plaintiff's Complaint because she has failed to plead a viable
 5 violation of Section 17533.7 of the California Business and Professions Code (California's specific
 6 "Made in the USA" labeling statute), the failure of which bars the entirety of her claims. Indeed,
 7 on August 29, 2024, another Judge in this District granted a similar motion to dismiss a nearly
 8 identical complaint filed by the same Plaintiff asserting the same claims based on the same theory
 9 of alleged falsity relating to foreign-mined bauxite in disposable aluminum pans. *See Hood v.*
 10 *Handi-Foil*, Case No. 24-cv-02373-RS, 2024 WL 4008711 (N.D. Cal. Aug. 29, 2024) (dismissing
 11 the Complaint in full and granting leave to amend within 30 days). Defendant also intends to move
 12 to compel arbitration of Plaintiff's claims.

13 **4. MOTIONS**

14 The case is currently at the pleadings stage, and Defendant intends to file a motion to
 15 dismiss and to compel arbitration. Defendant is also evaluating an administrative motion pursuant
 16 to Local Civil Rule 3-12 seeking transfer of this case to the docket of Chief Judge Seeborg as
 17 related to the earlier-filed *Hood v. Handi-Foil* case.

18 Should this case proceed past the pleadings stage, Plaintiff anticipates moving for class
 19 certification, and each side may also move for summary judgment prior to the deadline for
 20 dispositive motions, among other potential motions.

21 The parties may identify other legal disputes as the case progresses.

22 **5. AMENDMENT OF PLEADINGS**

23 There have been no amendments to date.

24 **6. EVIDENCE PRESERVATION**

25 The parties certify that they have reviewed the ESI Guidelines, have conferred regarding
 26 the preservation of relevant evidence, and will separately confer on a stipulated Protective Order
 27 and an E-Discovery Order, if necessary.

1 **7. DISCLOSURES**

2 Prior to the reassignment of this case to this Court, the parties entered into a stipulation
 3 whereby they agreed to exchange Rule 26(a)(1) initial disclosures on or before October 4, 2024.
 4 *See ECF No. 17.*

5 **8. DISCOVERY**

6 A. Discovery to Date

7 No discovery has taken place thus far.

8 B. Scope of Anticipated Discovery

9 **1. Plaintiff's Position**

10 Plaintiff anticipates discovery including, without limitation, (1) information about the
 11 Class, including sales figures, (2) information about Defendant's practices and procedures with
 12 regard to the manufacture of the materials that are the subject of this case, (3) information about
 13 Defendant's marketing of the materials that are the subject of this case, and (4) other subjects that
 14 come to light as discovery proceeds.

15 **2. Defendant's Position**

16 Defendant anticipates discovery regarding, among other information: (i) Plaintiff's
 17 purchases from Defendant; (ii) Plaintiff's alleged reliance on Defendant's label; (iii) Plaintiff's
 18 knowledge of and experience with aluminum pan and container products; (iv) class-related issues,
 19 including evidence pertaining to whether Plaintiff can satisfy her burden to demonstrate that she
 20 meets the requirements for class certification; (v) evidence related to the determination and
 21 quantification of any damages, both for Plaintiff individually and for her proposed class; and
 22 (vi) any satisfaction of the safe harbors set forth in California Business and Professions Code
 23 Section 17533.7 regarding "Made in the USA" labeling.

24 The parties reserve the right to seek third-party discovery.

25 C. Proposed Limitations or Modifications of the Discovery Rules

26 The parties do not currently anticipate the need to modify the limitations on discovery set
 27 forth in the Federal Rules of Civil Procedure, but respectfully reserve their right to seek relief from
 28 such limitation should the need arise later.

1 D. Stipulated E-Discovery Protocol and Protective Order

2 The parties agree to discuss entry of a stipulated e-discovery protocol and protective order
 3 at an appropriate juncture once discovery is underway (if necessary). In that event, the parties
 4 anticipate agreeing to and proposing stipulated orders consistent with the form used in this District.

5 E. Identified Discovery Disputes

6 Discovery has not begun, and the parties have not identified any current discovery disputes.

7 **9. CLASS ACTIONS**

8 Plaintiff anticipates filing a motion for class certification in accordance with the proposed
 9 schedule set forth below in Section 15. The parties and their counsel confirm that they have
 10 reviewed the Northern District of California's Procedural Guidance for Class Action Settlements.

11 **10. RELATED CASES**

12 Defendant is evaluating the filing of an administrative motion pursuant to N.D. Cal. Local
 13 Civil Rule 3-12 identifying this case as related to Plaintiff's earlier-filed case against Handi-Foil
 14 Corp., Jiffy Foil Corp., and Handi-Foil Aluminum Corp. *See Hood v. Handi-Foil Corp.*, No. 24-
 15 cv-2373-RS (Seeborg, C.J.). The two cases involve the same plaintiff, the same counsel, the same
 16 claims, the same subject matter, and substantially the same allegations.

17 **11. RELIEF**

18 Plaintiff alleges that Defendant has violated California's Unfair Competition Law,
 19 California's False Advertising Law, and California's Consumer Legal Remedies Act; has breached
 20 express and implied warranties to consumers; and has been unjustly enriched by these practices.
 21 *See* ECF No. 1. As such, Plaintiff has requested the following relief as set forth in the Complaint:

- 22 • Class certification;
- 23 • An order appointing Plaintiff as class representative and Plaintiff's counsel as class
 counsel;
- 24 • Injunctive relief;
- 25 • Damages, including compensatory, exemplary, statutory, and punitive damages;
- 26 • Attorney's fees and costs;
- 27 • Pre- and post-judgment interest on any amounts awarded; and

1 • Any other relief as may be just and proper.

2 Defendant disputes that Plaintiff is entitled to any relief.

3 **12. SETTLEMENT AND ADR**

4 There have been no formal ADR efforts to date. The parties will meet and confer pursuant
 5 to ADR L.R. 3-5 and will file their ADR Certification by Parties and Counsel on September 20,
 6 2024. *See* ECF No. 17. Counsel for the parties do not believe that an immediate ADR process
 7 would be beneficial or productive, and instead propose pursuing an ADR process later in the case
 8 following completion of some or all discovery. The parties have not engaged in settlement
 9 negotiations to date given Defendant's recent waiver of service and the nascent stage of the case.
 10 Both parties remain open to a reasonable settlement.

11 **13. OTHER REFERENCES**

12 As set forth above, Defendant is contemplating a motion to compel arbitration as part of
 13 its responsive pleading.

14 The parties agree that this case is not suitable for reference to a special master or the
 15 Judicial Panel on Multidistrict Litigation.

16 **14. NARROWING OF ISSUES**

17 The parties have not yet identified any issues that can be narrowed by agreement.

18 **15. SCHEDULING**

19 As part of the same stipulation discussed above, *see* ECF Nos. 16 (stipulation) and 17
 20 (order), the parties previously agreed to (and Magistrate Judge Tse entered) a briefing schedule
 21 pertaining to Defendant's responsive pleading:

22 • Defendant shall file any responsive motion on or before October 30, 2024;¹
 23 • Plaintiff shall file any opposition on or before November 21, 2024;
 24 • Defendant shall file any reply on or before December 11, 2024.

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 27 ¹ Based upon Defendant's waiver of service effective August 19, 2024, Defendant's time to
 28 respond to the Complaint was originally October 18, 2024 pursuant to Fed. R. Civ. P 4(d)(3), but
 the parties agreed to a modest extension, which was entered in ECF No. 17.

1 The parties now propose the following dates for discovery and other case activities:

2 Case Event	3 Deadline
<i>Discovery Deadlines</i>	
4 Identification of Plaintiff's experts and service of Rule 26 disclosures	May 14, 2025
5 Identification of Defendant's experts and service of Rule 26 Disclosures	June 18, 2025
6 Close of all discovery, including expert discovery ("Close of Discovery")	July 16, 2025
<i>Dispositive Motion Deadlines</i>	
7 Deadline for Class Certification Motion, Motions for Summary Judgment, and <i>Daubert</i> Motions	August 13, 2025
8 Deadline for Oppositions to Motion for Class Certification, Motions for Summary Judgment, and <i>Daubert</i> Motions	September 10, 2025
9 Deadline for Replies in Support of Motion for Class Certification, Motions for Summary Judgment, and <i>Daubert</i> Motions	September 24, 2025
10 Hearing on Motion for Class Certification, Motions for Summary Judgment, and <i>Daubert</i> Motions	Parties to confer regarding requested notice date prior to filing any motion
<i>Pre-Trial Exchanges and Motions in Limine</i>	
11 Exchange of Exhibit Lists and Witness Lists	December 17, 2025
12 Motions in Limine	January 16, 2026
13 Oppositions to Motions in Limine	January 30, 2026
14 Submission of Jury Instruction Requests, Proposed Verdict Form, and Proposed Special Voir Dire Questions	February 4, 2026
<i>Trial</i>	
15 Pretrial Conference	February 18, 2026
16 Trial Begins	March 9, 2026

16. TRIAL

27 Plaintiff has requested a jury trial. Defendant contends Plaintiff has waived her right to a
28 jury and agreed to arbitrate her claims.

1 The parties agree that an expedited trial procedure does not apply to this case.

2 **17. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

3 Plaintiff is unaware of any non-party interested entities or persons. Defendant filed its
4 Certification of Conflicts and Interested Entities or Persons Pursuant to Civil Local Rule 3-15 on
5 August 23, 2024. ECF No. 15.

6 **18. PROFESSIONAL CONDUCT**

7 All attorneys of record for the Parties have reviewed the *Guidelines for Professional*
8 *Conduct for the Northern District of California.*

9 **19. OTHER MATTERS**

10 The parties are currently unaware of any other matters that may facilitate the disposition of
11 this dispute.

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DATED: September 12, 2024

PEIFFER WOLF CARR KANE CONWAY
& WISE, LLP

Respectfully submitted,

KIRKLAND & ELLIS LLP

s/ Brandon M. Wise

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CERTIFICATE OF SERVICE

On September 12, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served.

/s/ Michael P. Esser
Michael P. Esser